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United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	William J. Hibbler	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 1751	DATE	9/22/05
CASE TITLE	Szopa v. White		

DOCKET ENTRY TEXT:

After reviewing the supplemental materials provided by Petitioner, the Court determines that it lacks subject matter jurisdiction over the petition. Consequently, the motion to dismiss (doc.#9) is GRANTED and this case is dismissed with prejudice.

[For further details see text below.]

Docketing to mail notice
and 10-450 form

STATEMENT

Sophie Szopa petitioned this Court for a review of the Internal Revenue Service's determination that she owed taxes for the tax years 1991 to 2000. The government moves to dismiss pursuant to Fed. R. Civ. P 12(b)(1), alleging that the Tax Court, and not this Court, has jurisdiction over Szopa's petition. 26 U.S.C. § 6330(d) permits a taxpayer to appeal the determination of an IRS Appeals Officer following a Collection Due Process hearing by commencing an action within thirty days, where the underlying tax liability is for income tax, in the United States Tax Court. Employment taxes, however, are not within the jurisdiction of the United States Tax Court, and appeals of Collections Due Process hearing determinations involving employment taxes must be heard by the United States District Court. See 26 U.S.C. § 6330(d)(1)(B); 26 C.F.R. § 601.102.

Szopa alleges in her petition that she contests a determination involving employment taxes. See Petition at ¶ 3. The government, in its brief, argues that the determination involves income taxes. The Court ordered both parties to supplement their briefs on the motion to demonstrate the existence (or lack thereof) of subject matter jurisdiction. Szopa responded by supplementing her brief with several exhibits. One such exhibit, the Notice of Determination sent to her by the IRS, demonstrates conclusively that the taxes at issue are income taxes and not employment taxes. In the portion of the Notice for "Tax Type/Form Number," the Notice reads "Individual/1040." A form 1040 is a United States Individual Income Tax Return. Because the tax liability at issue is for income tax, this Court lacks jurisdiction, and Szopa should file this action before the Tax Court. The Motion to Dismiss is GRANTED and this case is dismissed with prejudice.

Courtroom Deputy
Initials: